**The Detroit Free Press, Inc. *and* the Newspaper Guild of Detroit, Local 22, the Newspaper Guild, AFL–CIO.** Case 7–CA–41284

September 29, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AMD HURTGEN

Pursuant to a charge filed on August 18, 1998, the General Counsel of the National Labor Relations Board issued an amended complaint on June 23, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by unilaterally removing certain classifications from the bargaining unit. The amended complaint alleges that by such conduct, the Respondent has failed and refused, and continues to fail and refuse, to bargain collectively with the exclusive collective-bargaining representative of its employees following the denial of its petition for unit clarification in Case 7–UC–489. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with affirmative defenses, admitting in part and denying in part the allegations in the amended complaint.

On July 17, 2000, the General Counsel filed a Motion for Summary Judgment. The Charging Party filed a motion joining in the General Counsel's Motion for Summary Judgment. On July 19, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer to the amended complaint[1] the Respondent admits that it is failing and refusing to bargain with respect to the clarified unit but attacks its refusal to bargain on the basis of its arguments that the unit is inappropriate because the Board incorrectly failed to clarify the unit as requested in Case 7–UC–489.[2] The Respondent asserts that the individuals in the classifications it sought to remove from the unit in the clarification proceeding are supervisors, and thus, not appropriately included in the bargaining unit.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Michigan corporation, with an office and place of business at 600 West Fort Street, Detroit, Michigan, has been engaged in the operation of the news and editorial departments of a daily newspaper.

During calendar year 1998, a representative period, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $500,000, and purchased and received at its facilities in the State of Michigan newsprint and other goods and materials valued in excess of $50,000 directly from points outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent and the Charging Union have been parties to collective-bargaining agreements encompassing a collective-bargaining unit described in the agree-

[1] The Respondent's request to dismiss the amended complaint is denied.

[2] Although the Respondent raised as affirmative defenses the timeliness of the unfair labor practice charge and the scope of its coverage, the amended complaint's allegations are not barred by Sec. 10(b) or impermissibly outside the allegations of the charge. In its response to the Notice to Show Cause, the Respondent did not present any argument or evidence in support of those asserted affirmative defenses or explain why the Board should dismiss the amended complaint based on these affirmative defenses. In these circumstances, these defenses do not present any issues warranting a hearing. We also reject the Respondent's contention that it has a good-faith doubt as to the Union's majority status. In doing so we rely on the Respondent's admissions to the amended complaint allegations that the Union is the designated exclusive representative of the unit and has been recognized as such. Respondent acknowledges that the "sole question at issue is whether the positions removed from the bargaining unit are supervisory positions . . . ." Accordingly, and noting that the Respondent did not provide the bases for these affirmative defenses, we reject them.

[3] Member Hurtgen dissented in the underlying UC proceeding. However, he agrees with his colleagues that, except as noted in fn. 2, above, the Respondent has not raised any issue that is properly litigable in the instant case. Accordingly, for institutional reasons, he joins his colleagues in granting summary judgment.

ment. The most recent agreement was effective by its terms from May 1, 1992, until April 30, 1995.

At all material times, the Charging Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such representative by the Respondent. Such recognition has been embodied in the collective-bargaining agreement described above, which agreement was extended by mutual consent until June 30, 1995.

On November 1, 1996, the Respondent filed a petition in Case 7–UC–489, later amended, seeking clarification of the unit to exclude, as supervisors, the following classifications: assistant metro editor, assistant business editor, deputy design director, assistant youth editor or Yak's corner editor, assistant sports editor, sports preps coordinator, assistant features editor, deputy copy chief, deputy director new media, director of library research and assistant nation/world editor.

On October 14, 1999, the Regional Director issued a Decision and Order denying the Respondent's request to clarify the unit to exclude the classifications in dispute. The Respondent filed a request for review which the Board denied on December 9, 1999. Thereafter, the Respondent filed a request for reconsideration which was denied by the Board on January 24, 2000.

About April 28, 1998, the Respondent, without consent or agreement of the Charging Union, removed the classifications listed above from the unit.

*B. Refusal to Bargain*

About June 2, 1998, the Charging Union, by letter, protested the Respondent's removal from the unit of the classifications listed above and demanded bargaining on said removal. On December 16, 1999, and again on February 1, 2000, the Charging Union, in writing, demanded of the Respondent that the classifications listed above be returned to the unit.

Since April 28, 1998, and continuing to date, the Respondent, with the exception of the assistant nation/world editor position, has failed and refused to restore to the unit the classifications described above.

CONCLUSION OF LAW

By refusing on and after April 28, 1998, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, The Detroit Free Press, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Newspaper Guild of Detroit, Local 22, the Newspaper Guild, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the bargaining unit.

(b) Rescind the unilateral changes to the unit made on April 28, 1998.

(c) Restore the unit classifications to the bargaining unit and make whole unit employees, if any, who have suffered financial loss due to the unilateral changes.

(d) Within 14 days after service by the Region, post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 7 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 28, 1998.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the Newspaper Guild of Detroit, Local 22, the Newspaper Guild, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain with the Union as the exclusive representative of our employees in the bargaining unit.

WE WILL rescind the unilateral changes to the unit made on April 28, 1998.

WE WILL restore the unit classifications to the bargaining unit and make whole unit employees, if any, who have suffered financial loss due to the unilateral changes.

THE DETROIT FREE PRESS, INC.